

1 which is a series of attempts at cooperation but
2 if there's a hard time, we can ask you?

3 JUDGE SIPPEL: Anybody can ask me if
4 somebody is giving them a hard time.

5 MR. LIEBERMAN: Thank you.

6 MR. LIEBERMAN: Anybody. You know,
7 that's just not -- that's taboo because I'm the
8 only judge in town and, you know, I just don't
9 have time for that kind of business. There's a
10 lot of business in this case. That's one of them
11 I don't want to have to deal with but I will deal
12 with it. And I think we've got an agreement.

13 Now, I was going to get to you with
14 the petitioner's aspect. Why does the petitioner
15 need any information? What are you going to do
16 with it? What's your issue here?

17 MR. LIEBERMAN: The petitioners,
18 Warren Havens and his related companies plan to
19 take an active role in this proceeding --

20 JUDGE SIPPEL: Why?

21 MR. LIEBERMAN: -- because it's their
22 position that the licenses should be terminated

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1 and that that termination should make them void
2 ab initio and, therefore, we plan to, hope to
3 participate in the hearing on the same side as
4 the Bureau to in a sense prosecute the case
5 against Maritime so that the licenses will be
6 terminated and voided ab initio.

7 JUDGE SIPPEL: Well, let me see if I
8 understand how this came about. Is Mr. Havens
9 and I know that he's at seven companies, I
10 believe, that are not only in this case.

11 MR. LIEBERMAN: Right. In one way
12 shape or form.

13 JUDGE SIPPEL: And he was put in a
14 case. Was this by virtue of the same statute or
15 is this a different authority?

16 MS. KANE: A different authority.

17 JUDGE SIPPEL: And can you just kind
18 of paraphrase for me? Does that say, will, may
19 or --

20 MS. KANE: Pursuant to the fact that
21 he had several petitions to deny against many of
22 the applications, if not all of the applications

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1 at issue.

2 JUDGE SIPPEL: All right.

3 MS. KANE: In addition to Maritime's
4 application for the Auction 61 spectrum.

5 JUDGE SIPPEL: Okay.

6 MR. LIEBERMAN: If I may add to that,
7 the Havens parties we're the second highest
8 bidders in the auctions, at least in some of the
9 auctions so their position is that if these
10 authorizations are voided ab initio, then the
11 Havens parties are next in line to be the
12 licensee of this spectrum, number one. And
13 number two, the petition to deny they filed at
14 the time of the end of the auction and
15 preparatory to the grant, that's still pending on
16 application for review. In other words, the
17 petition to deny was dismissed but the Havens
18 parties filed an application for review with the
19 Commission which is still pending.

20 JUDGE SIPPEL: And that's why you're
21 in the case under the statute?

22 MR. LIEBERMAN: Well, we're in the

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1 case because we're a party in interest and the
2 application for review that's still pending we
3 believe should be consolidated with this case and
4 we plan to file a motion in that regard because
5 it's the same issues. The application, Mr.
6 Havens and his companies, their petitions to deny
7 and their application for review put before the
8 Bureau, the Commission, the same facts that the
9 Bureau has now found on subsequent investigation
10 to be cause for an Order to Show Cause and the
11 Hearing Designation Order. It's the same basic
12 facts.

13 JUDGE SIPPEL: They basically flushed
14 your case out for you in a sense.

15 MR. LIEBERMAN: Yes. Right. And so
16 yet our case is still technically pending on
17 application for review. So, we are a party to
18 the proceeding because in a sense we're the party
19 other than the Bureau that's prosecuting the case
20 against the Maritime entities.

21 JUDGE SIPPEL: But if you lose on your
22 petition for reconsideration --

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1 MR. LIEBERMAN: Well, it is an
2 application for review that's pending that's been
3 pending for a year and a half, I believe, perhaps
4 more. I'm sorry, four years. It's been pending
5 for four years.

6 JUDGE SIPPEL: Well, what's a few
7 years -- well, what I'm trying to figure out is
8 if it's a reconsideration. Is it a
9 reconsideration for --

10 MR. LIEBERMAN: It's an application
11 for review.

12 JUDGE SIPPEL: Review. Okay.

13 MR. LIEBERMAN: Yes.

14 JUDGE SIPPEL: Now, the reason I'm
15 asking that is that if you lose up there, you can
16 go right to the Court of Appeals, can't you?

17 MR. LIEBERMAN: Right, but it's in the
18 Commission's interest to have the same set of
19 facts considered in one case rather than two
20 cases, because if we prevail on our application
21 for review theoretically, there would be a
22 hearing designation order or else simply taking

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1 away the license making this whole hearing moot.

2 JUDGE SIPPEL: That might be
3 consolidated as a second case, but --

4 MR. LIEBERMAN: That's our goal.

5 JUDGE SIPPEL: It seems to me that
6 you're shoe-horning yourself into this one now
7 preliminary to what the Commission might want to
8 do.

9 MR. LIEBERMAN: Well, we're not shoe-
10 horning. We're named in the designation order.

11 JUDGE SIPPEL: Yes, you are. I know
12 that.

13 MR. LIEBERMAN: Number one.

14 JUDGE SIPPEL: Going here.

15 MR. LIEBERMAN: And number two we have
16 the same interest the Bureau does which is that
17 these -- that certain conduct took place or
18 didn't take place that is cause for revocation of
19 the licenses but we would perhaps go further than
20 the Bureau, perhaps, to say that the revocation
21 should make these licenses void ab initio and,
22 therefore, we're back to where we were status quo

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1 ante as the second highest bidder in the auction.

2 JUDGE SIPPEL: And you want me to say
3 going, going gone?

4 MR. LIEBERMAN: Well, we're not sure
5 at this moment whether that's within the scope of
6 this hearing designation order but it would be if
7 this case were consolidated with our pending
8 application for review which, of course, we'll
9 submit papers with arguments on that point.

10 JUDGE SIPPEL: All right. I just want
11 to grasp what's here.

12 MR. KELLER: I just want to say two
13 things. One and I'll defer to the Bureau on this
14 but I think it's safe to say that while I can't
15 give you any guarantees, it's extremely unlikely
16 the Commission is going to act on the application
17 for review while this hearing is pending because
18 the application for review is an application for
19 review of dismissal of a protest against the
20 application that resulted in this license. The
21 license is now before you to be possibly revoked.
22 So, the likelihood that the Commission could rule

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1 on that application review in the interim is
2 almost nonexistent.

3 Secondly, just for the record, I would
4 dispute the Havens parties claim that they
5 factually may or may not be the second highest
6 bidder in one or more of these auctions. But
7 that does not automatically entitle them to the
8 license where these applications go down. The
9 Commission also has the option to re-auction the
10 spectrum in a new auction. So, any claim to the
11 spectrum as a result of this revocation is
12 speculative and would, again, be an 84 question
13 anyway not decided in this hearing.

14 JUDGE SIPPEL: Thank you for that
15 clarification. I don't mean to say that -- I'm
16 just trying to understand this, you know, in sort
17 of a big picture way. Who is here? Someone want
18 to talk here? All right.

19 Now, let me just go back again to the
20 Bureau.

21 What is your position with respect to
22 all that? What is your position with respect to

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1 Mr. Havens being actively in this case?

2 MS. KANE: It is our understanding,
3 Your Honor, that by virtue of the fact that he
4 has filed a petition to deny against the very
5 applications that are designated, he is entitled
6 to full party status in this hearing.

7 With regard to the timing of the
8 application of review consideration and any of
9 that, that is not for us to comment on.

10 JUDGE SIPPEL: Well, you feel that
11 he's entitled to full party status in here. Even
12 fuller party than the applicants?

13 MS. KANE: No, actually, the same full
14 party status that the applicants or the assignees
15 are entitled to but which they do not appear to
16 wish to participate in.

17 JUDGE SIPPEL: All right. I'm just
18 confusing myself. But, okay, I hear your answer.

19 Let me put it to you this way again.
20 I got the same interest. I got the same interest
21 in limiting the participation of the petitioner
22 parties for the same reason. I don't want this

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1 case to get more complicated and confusing than
2 it needs to be. I'm not convinced that Mr.
3 Lieberman can't wait until you develop your case
4 and the reason, I'll talk to Mr. Lieberman
5 directly on that. The reason is because you
6 still got your rights up to the Commission. No
7 matter what gets done down here, or let me put it
8 another way. If you have particular information
9 that the Bureau doesn't have, if you can bring to
10 this case light that the Bureau can't, shed light
11 on it in terms of factual information that we
12 need, then your participation as active
13 participation as a party in my estimation would
14 be different. But if you're just going to be here
15 to duplicate what the Commission counsel is
16 doing, well, that doesn't make much sense.

17 MR. LIEBERMAN: On one hand, Your
18 Honor--

19 JUDGE SIPPEL: To me it doesn't.

20 MR. LIEBERMAN: I can assure you that
21 we'll cooperate with the Bureau 100 percent to
22 make sure we're not both doing the same thing

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1 before you in a hearing. On the other hand,
2 although our interest in general is the same as
3 the Bureau, as the Bureau up to a point,
4 certainly a private party is perhaps free to make
5 arguments or put in evidence that a governmental
6 agency may not want to bring in or put in for its
7 own internal reasons.

8 We don't know everything internal that
9 the Bureau is aware of and, for example, we have
10 Mr. Havens has a pending Freedom of Information
11 Act request pending at the Commission for a long
12 time that hasn't been responded to. So the
13 Bureau has more information than we do or perhaps
14 different information than we do.

15 On the other hand, the same can be
16 said of Mr. Havens who we believe has the right
17 in this proceeding to undertake his own
18 discovery, investigation and put forth evidence
19 that perhaps the Bureau chooses not to put forth
20 or for one reason or another can't put forth.
21 So, we believe we have full rights to participate
22 as in a sense a co-prosecutor with the Bureau as

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1 a private outside party who is the petitioner who
2 got this whole thing started.

3 JUDGE SIPPEL: Well, I am not
4 convinced of the accuracy of that statement --
5 the breadth of that statement. You do have
6 rights as a participant in some way shape or form
7 and I'm trying to pare it down to the minimum but
8 I don't want to take any rights away from you.
9 As I say, if you've got a theory backed by some
10 facts that the Bureau doesn't have, and you want
11 to come in as a party on that particular matter,
12 and, again, this term "party" is confusing
13 everything because you are a party. I'm talking
14 about an active participant party that's not
15 going to be duplicative of what the Bureau is
16 saying.

17 MR. LIEBERMAN: Well, as I said, we
18 will work with the Bureau and not be duplicative
19 but we also have a strong interest in making sure
20 that the Bureau puts forth what evidence there is
21 because it was Mr. Havens who filed the Petition
22 to Deny, that the Bureau denied, a different

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1 Bureau. But filed a petition for reconsideration
2 that was denied and has pending an application
3 for review which I agree with what's already been
4 said. I am confident that the Commission won't
5 act on that application for review while this
6 proceeding is pending.

7 JUDGE SIPPEL: Well, you know, it's
8 kind of like in a catch-22 situation that I want
9 to give a lot of hard thought to.

10 Mr. Keller?

11 MR. KELLER: Yes, I wanted to comment
12 on a couple of things of what Mr. Lieberman said
13 and also something the Bureau said earlier.
14 Again, I seem to be spending all my time stating
15 things for the record, but I don't want my
16 silence to be implied that I agree with some of
17 these things.

18 I do not believe and I take issue with
19 the argument that Havens and the Havens parties
20 are entitled as a matter of right to party status
21 in the participation in the hearing. Their role
22 in this hearing is as a petitioner to deny under

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1 Section 309(d) of the Act.

2 The applicant parties have a right to
3 a hearing under Section 309(e) and so, therefore,
4 we and the other applicant parties have that
5 right and also us under Section 312 as a license
6 subject to revocation.

7 What happens is as a petition to deny,
8 the Havens parties may have a right to intervene
9 in the hearing. They may have a right to seek
10 intervention in the hearing but it would then the
11 discretion of the judge or the Commission as to
12 whether to grant that intervention. So, the
13 hearing designation order doesn't name a party
14 but I view that as nothing more than the same
15 thing you might have done afterwards in granting
16 a motion to intervene. That being the case, I
17 think you also within your full discretion to
18 limit participation as you see fit for the
19 conduct of the hearing.

20 JUDGE SIPPEL: Well, that's where I
21 was going with this but as I said, I don't want
22 to draw a line in the sand just yet. I view your

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1 participation and it's kind of like because you
2 are "a party" it would be an analogous situation.
3 But there is a provision in the Rules for
4 Intervention that you can come in, even though
5 you might not have a particular party interest as
6 it's defined, but you do have information. And
7 the Commission wants all the relevant information
8 on anything that is going to shed light on this
9 issue and we don't care what your motive might be
10 or where you've coming from. I want credibility,
11 of course, but that's not an issue. So, that's
12 what I'm coming from.

13 Now, I'll tell you what I would like
14 because this thing it's got me confused and I
15 think that there's a way of clearing this up.

16 If you wouldn't mind, Mr. Keller, if
17 you would file a motion in the nature of limiting
18 Mr. Havens participation as a party, however, you
19 want to phrase this thing and go down and make
20 the same points that you were just making with
21 whatever authority you can find. And then, Mr.
22 Lieberman, you respond to that and let's see.

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1 It's going to put me in a better position to make
2 a decision. Like I say, I want to give you
3 whatever assurance you can that I don't want to
4 cut -- I don't want to cut you out if you've got
5 a way that can add to this case with evidence,
6 argument, whatever you may feel. But on the
7 other hand, Mr. Keller, Duquesne and -- I'm
8 sorry, let me start here. Maritime certainly has
9 an interest in not getting double teamed and that
10 kind of thing and so I want to-- the only way I
11 can start this out is by getting control of the
12 open question.

13 Secondly, of course, the Bureau I want
14 you to comment on that. When both pleadings come
15 in, in other words, there's going to be a motion.
16 There's going to an opposition. You comment on
17 the situation after you've seen all of that.
18 Okay?

19 MS. KANE: We can do that, Your Honor.

20 JUDGE SIPPEL: And I'll give you some
21 dates on that but let me think if there's
22 anything else that I wanted to cover on that.

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1 Oh, the other thing, you are giving me
2 a little bit of concern with your argument, Mr.
3 Lieberman, is that the Bureau has to share all of
4 their case files with you.

5 MR. LIEBERMAN: That is right. That's
6 exactly right.

7 JUDGE SIPPEL: They are the -- okay.
8 I think that's understood.

9 MR. LIEBERMAN: We will cooperate 100
10 percent. But they don't have to show us
11 everything they have.

12 JUDGE SIPPEL: It's kind of a one-way
13 street in a sense. Of course, you know, you want
14 to work out timing and a lot of other things too
15 and there is a lot of evidence that they have
16 that you probably will get access to one way or
17 the other. But you've got to be perfectly candid
18 with them and give them everything.

19 MR. LIEBERMAN: Yes.

20 JUDGE SIPPEL: The good, bad and the
21 ugly. And, you know, take it from there. I
22 mean, you're right. It would be an assist to

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1 them to have you perhaps present that phase of
2 it. Some how or another I want to get it in the
3 record if it's obviously if it's relevant
4 evidence to the issue and it's reliable evidence.

5 MR. LIEBERMAN: Yes, sir.

6 MR. MILLER: Your Honor, in terms of
7 the applicant, I'm not saying we would but would
8 we be able to if we so -- a couple of us ought to
9 comment on the pleadings that you just --

10 JUDGE SIPPEL: Please do.

11 MR. MILLER: -- asked because we have
12 an interest in protecting whatever participation
13 the Havens group may have with respect to our
14 client. And we would like, if we decided to do
15 that, we would like the opportunity to present
16 that on the record so you can make a ruling on
17 that.

18 JUDGE SIPPEL: I'll permit that. But
19 then that's going to back it up a little bit
20 because Mr. Lieberman has to have a full deck
21 before he has to submit an opposition. But I
22 want to limit the briefing on this, you know, to

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1 just a few pages.

2 MR. MILLER: Or, you know, it's
3 possible then that we might, you know, work with
4 Maritime -- whatever it is to consolidate as long
5 as the issues are before you.

6 JUDGE SIPPEL: Certainly.

7 MR. MILLER: We can certainly do that
8 as well.

9 JUDGE SIPPEL: Certainly, because that
10 does tie in with the other concern that I've seen
11 here and that is there's been several requests
12 for a protective order. And the nature of the
13 protective order seems to be one of avoiding
14 harassment or, you know, repeated requests and
15 that kind of thing.

16 MR. MILLER: Yes.

17 JUDGE SIPPEL: That's a different kind
18 of protective order than -- well, there's the
19 other kind, you know, for commercial information,
20 what not. So, I'm going to try and catch that
21 one right up front also and whatever order I end
22 up issuing on Mr. Havens' issue, I hope to be

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1 able to also cover -- well, it doesn't have to be
2 in that context. But when you're working out a
3 proposed schedule which is what I want to happen
4 after this, that you work out also the
5 understanding with the parties are going to
6 cooperate with you in discovery. Like, you know,
7 we're back to that question again. All right.
8 The bifurcation and you're afraid of losing some
9 kind of leverage to get the discovery you need.

10 MS. KANE: Well, just losing our
11 ability to actually seek discovery from the
12 assignees and, if necessary, from Mr. Havens.

13 JUDGE SIPPEL: As I say, I'm assuring
14 you that you're going to have it. I'm giving you
15 the opportunity to work this out in either a
16 proposed stipulation or a submission to me of
17 what it is that you need and I'll consider it and
18 reduce it to an order. My preference would be
19 that it be a stipulation between you and the --
20 it would be primarily, I guess, the applicant
21 parties.

22 MS. KANE: I don't foresee any

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1 difficulty in trying to work that out with them,
2 Your Honor, not after you've instructed them
3 accordingly.

4 JUDGE SIPPEL: No, as I say, we've
5 been down that road so it's just a question of
6 the form to do it in and I think a stipulation
7 would work but I'm going to leave that up to you
8 and counsel.

9 I'm not sure how this is going to
10 affect you, Mr. Lieberman, but the Havens
11 situation. Basically, it would be, I think, the
12 same thing. You just have to sign on to whatever
13 the procedure is for cooperating with the Bureau
14 on discovery and I think you're -- so, I think
15 that's all we really have.

16 And then the next thing I need is a
17 proposed schedule for completing discovery.

18 MS. KANE: Your Honor, we had taken
19 the liberty of proposing a schedule and we have
20 that for you. We're happy to hand it up to you
21 if you'd like unless you had --

22 JUDGE SIPPEL: No.

1 MS. KANE: Okay. Is it appropriate if
2 we provide --

3 JUDGE SIPPEL: Have the other parties
4 got the procedure?

5 MS. KANE: We've discussed it with
6 them. We have not shown them the actual dates
7 but we have copies for everybody that we could
8 circulate.

9 JUDGE SIPPEL: Well, why don't you--
10 okay. Why don't you, okay. Why don't we do
11 that.

12 MR. MILLER: Your Honor, were you
13 going to set up a schedule for the pleadings we
14 were just talking about?

15 JUDGE SIPPEL: I am.

16 MR. MILLER: Okay.

17 JUDGE SIPPEL: I am. I'm going to
18 give a little more time than I would otherwise
19 give because -- yes, I'm going to set the
20 schedule. Oh, really, is this eight months
21 discovery. Do you need that much?

22 MS. KANE: Well, Your Honor our

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1 concern obviously is that we have a lot of issues
2 that have been designated for under the HDO. We
3 have 10 issues in particular, many of which are
4 very complicated and involve multiple Maritime
5 entities and real parties in interest and their
6 parties. Even by the information we have
7 currently, we're looking at at least 15
8 depositions, if not more than that. And history
9 has shown as it has been put forth in the HDO
10 that Maritime has been very difficult in
11 providing complete discovery or complete
12 information and we're fearful that we're going to
13 have to go to them repeatedly and also,
14 unfortunately, appear before you for some sort of
15 relief and we were concerned that a more
16 truncated discovery schedule would preclude us
17 from obtaining that information.

18 JUDGE SIPPEL: Well, okay. Then let
19 me ask, Mr. Keller, what's your reaction to this?

20 MR. KELLER: Well, I have discussed
21 this with the Bureau, the Bureau discussed this
22 with me last week, I think, and I too was a

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1 little surprised a the length of it, you know. I
2 would, my druthers might be to push this back a
3 few months but then we'd be during the hearing--
4 I don't think a hearing date before the end of
5 the year is probably realistic. But to make it
6 much earlier than this then we're going to be
7 doing a hearing in February or something which
8 might not be good with weather. So, I guess I'm
9 sort of neutral on this schedule. I have no
10 problem with it.

11 JUDGE SIPPEL: Does anybody have a
12 problem?

13 MR. HULL: Your Honor?

14 JUDGE SIPPEL: Yes, sir.

15 MR. HULL: The most fundamental
16 problem I have with this is that it was prepared
17 prior to determining that we were going to
18 bifurcate the proceeding. And so this provides
19 for only one hearing, one discovery period, one
20 everything. So, if we're going to bifurcate it,
21 I think we need to compress this on the front end
22 and then we can work out the schedule for the

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1 later follow on piece of that if that's even
2 necessary.

3 JUDGE SIPPEL: Oh, you mean for the
4 penalty phase?

5 MR. HULL: Yes. And this seems to
6 have been created in anticipation that there
7 would be the numerous issues that counsel had
8 identified but we seem to at least have carved
9 off one significant piece of those.

10 MS. KANE: Your Honor, I just want to
11 clarify.

12 JUDGE SIPPEL: Thank you. Thank you.
13 No, that's an important point.

14 MS. KANE: I understand that but I
15 just want to clarify. I had not heard that you
16 had instructed a bifurcated discovery schedule.
17 Simply that the assignees --

18 JUDGE SIPPEL: No, there is no
19 bifurcated discovery schedule.

20 MS. KANE: Okay. Because I believe
21 that --

22 JUDGE SIPPEL: It's bifurcated in the

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